

I N D E X

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**THE TRANSCRIPT IS SEALED FROM PAGE 9, LINE 21, TO
CONCLUSION.**

1 Tuesday Morning Session

2 September 29, 2015

3 10:04 a.m.

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5 P R O C E E D I N G S

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7 (The oath is given to Interpreter Kighesta Maliro
8 by the Courtroom Deputy Clerk.)

9 THE CLERK: Please state your name for the record.

10 THE INTERPRETER: Kighesta Maliro.

11 THE CLERK: Thank you.

12 THE COURT: All right. This is the case of
13 United States of America versus Dimitry Belorossov,
14 Case No. 14-CR-210.

15 First, let me ask counsel for the parties to
16 identify yourselves for the record and the parties you
17 represent.

18 MR. GRIMBERG: Good morning, Your Honor.
19 Steven Grimberg on behalf of the United States.

20 THE COURT: Good morning, Mr. Grimberg.

21 MR. FRANCO: Good morning, Your Honor.
22 Lenny Franco on behalf of Dimitry Belorossov.

23 THE COURT: Good morning, Mr. Franco.

24 MR. FRANCO: Good morning, Your Honor.

25 THE COURT: Before we proceed any further,

1 Mr. Franco, does your client need an interpreter or does he
2 have sufficient command of the English language to proceed
3 without an interpreter?

4 MR. FRANCO: My understanding, Your Honor, is that
5 he speaks pretty well. Now, it's not my understanding, just
6 my experience. But we would like to keep the interpreter
7 present if we need him.

8 Is that correct?

9 THE DEFENDANT (*Speaking in English*): Yes, that's
10 correct. If we can keep an interpreter to be sure
11 I understand everything, I would be comfortable with that.*

12 MR. FRANCO: Yeah, we would prefer just to do the
13 sentencing in English, Your Honor, but to keep the
14 interpreter here in case he gets confused.

15 THE COURT: That's fine with me.

16 MR. FRANCO: Thank you.

17 THE COURT: So we will proceed in English.

18 MR. FRANCO: Yes, Your Honor. Thank you.

19 THE COURT: Is that what you want to do,
20 Mr. Belorossoff?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. This is a sentencing
23 hearing pursuant to the defendant's plea of guilty to the
24

25 * *The defendant speaks in English throughout this transcript.*

1 information charging the defendant with computer fraud.

2 Mr. Franco, have you and your client had an
3 opportunity to review the presentence report?

4 MR. FRANCO: Yes, Your Honor.

5 THE COURT: I have carefully reviewed the
6 presentence report, and I will adopt the facts in the
7 presentence report to which no objection has been made as the
8 findings of the Court.

9 I don't believe there were any objections,
10 Mr. Franco.

11 MR. FRANCO: There were none filed, Your Honor.
12 And this isn't a -- this is not a guideline objection, but
13 the guidelines that are coming into effect in November -- or
14 proposed guidelines at this time, there is a more favorable
15 provision with regard to the number of victims.

16 And I would like the Court to consider argument
17 as a reason to depart. Obviously it's not a guideline
18 objection because it's not the guidelines right now, and it
19 certainly wasn't the guidelines at the time the offense was
20 committed.

21 THE COURT: All right. We will do that later.

22 MR. FRANCO: Okay. Yes, Your Honor.

23 THE COURT: All right. Then my guideline
24 calculations are as follows using the 2013 edition of the
25 guidelines manual.

1 With respect to Count One charging the defendant
2 with computer fraud, as set forth in Paragraph 23, the base
3 offense level is six.

4 As set forth in Paragraph 24, the offense level is
5 increased by twelve because the loss amount was more than two
6 hundred thousand dollars.

7 As set forth in Paragraph 25, the offense level is
8 increased by six because the offense involved 250 or more
9 victims.

10 As set forth in Paragraph 26, two levels are added
11 because the defendant received stolen property as a result of
12 the offense.

13 As set forth in Paragraph 27, two levels are added
14 because a substantial part of the fraudulent scheme was
15 committed outside of the United States.

16 As set forth in Paragraph 28, two levels are
17 added because the offense involved a conviction under
18 Title 18 U.S. Code Section 1030, or the offense involved
19 an unauthorized public dissemination of personal
20 information.

21 As set forth in Paragraph 29, four levels are added
22 because the defendant was convicted of an offense under
23 18 U.S. Code Section 1030 (a) (5) (A).

24 As set forth in Paragraphs 30, 31 and 32, there are
25 no victim-related adjustments, no adjustment for role in the

1 offense, no adjustment for obstruction of justice.

2 Therefore, the adjusted offense level is 34.

3 As set forth in Paragraph 35, the defendant
4 receives a three-level downward adjustment for acceptance of
5 responsibility. Therefore, the total offense level is 31.

6 As set forth in Paragraphs 38 through 40, the
7 defendant has no prior criminal convictions. His criminal
8 history point total is zero, which puts him in a criminal
9 history category of one.

10 As set forth in Paragraphs 58 through 60, the
11 defendant has no assets. He has no source of income. He's
12 been incarcerated since his arrest in August of 2013. He
13 does not appear to be able to pay a fine within the guideline
14 range. Therefore, the Court can waive the fine or impose a
15 fine below the guideline range.

16 Mr. Belorossoff, have you understood everything that
17 I have said so far in English?

18 THE DEFENDANT: Yes, Your Honor, I understood.

19 THE COURT: Thank you.

20 Mr. Grimberg, any objections to the guideline
21 calculations?

22 MR. GRIMBERG: No objection, Your Honor. Just one
23 clarification.

24 The defendant was arrested by Spanish national
25 police in August of 2013, but he was not extradited to the

1 United States until May 9th of 2014.

2 THE COURT: All right. Mr. Franco, any objections
3 to the guideline calculations?

4 MR. FRANCO: No, Your Honor.

5 THE COURT: All right. Mr. Grimberg, you filed a
6 motion under 5K.

7 MR. GRIMBERG: I did, Your Honor, it was filed
8 under seal. I'm happy to address any questions Your Honor
9 has in chambers, but our preference would be not to make that
10 part of the public record.

11 THE COURT: Well, I gave the motion back to the
12 clerk's office so I didn't keep it. Have you got a copy of
13 it?

14 MR. GRIMBERG: I do. It is not a file-stamped
15 copy, but it is a copy.

16 THE COURT: Well, I think I jumped the gun here as
17 I haven't actually stated the guideline calculations.

18 MR. GRIMBERG: Right.

19 THE COURT: So let me back up.

20 MR. GRIMBERG: Sure.

21 THE COURT: Accordingly, the sentencing options are
22 as follows.

23 The statutory penalties is a sentence of
24 imprisonment up to ten years and a fine of up to
25 \$250,000. There is no mandatory minimum prison sentence.

1 With a total offense level of 31 and a criminal
2 history category of one, the custody guideline range is 108
3 to 135 months. The fine guideline range is \$15,000 to
4 \$150,000.

5 There is restitution owed in the amount of
6 \$322,409.09. There is a special assessment of \$100. There
7 is a forfeiture provision.

8 The Court could impose cost of confinement of up to
9 \$29,291.62, or cost of supervision of up to \$3,162.03, or
10 both.

11 There is no probation option. There is a term of
12 supervised release of one to three years.

13 And the defendant is a noncitizen who was
14 extradited to the United States.

15 Mr. Grimberg, any objections to the guideline
16 calculations?

17 MR. GRIMBERG: No objections.

18 THE COURT: Mr. Franco, any objections to the
19 guideline calculations?

20 MR. FRANCO: No objections.

21 **(SEALED FROM THIS POINT TO CONCLUSION.)**
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C E R T I F I C A T E

UNITED STATES OF AMERICA :
:
NORTHERN DISTRICT OF GEORGIA :

I, Nicholas A. Marrone, RMR, CRR, Official Court Reporter of the United States District Court for the Northern District of Georgia, do hereby certify that the foregoing 32 pages constitute a true transcript of redacted sealed proceedings had before the said Court, held in the city of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 9th day of March, 2017.

/s/ Nicholas A. Marrone

NICHOLAS A. MARRONE, RMR, CRR
Registered Merit Reporter
Certified Realtime Reporter
Official Court Reporter
Northern District of Georgia